

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA INDIANS
OF THE BAD RIVER RESERVATION

Plaintiff,

v.

Case No. 3:19-cv-00602

ENBRIDGE ENERGY, L.P.

Counter-Plaintiff,

v.

BAD RIVER BAND OF THE LAKE

Judge William M. Conley Magistrate
Judge Stephen Crocker

**DECLARATION OF JULIE KLOSS MOLINA IN SUPPORT OF ENBRIDGE'S
OPPOSITION TO THE BAND'S REQUESTED PERMANENT INJUNCTION**

I, Julie Kloss Molina, declare the following based on personal knowledge to which I am competent to testify:

1. I am the Senior Environmental Advisor at Enbridge. I have worked in environmental project management and permitting for over 15 years.
2. I have been intimately involved with Enbridge's various proposals to the Bad River Band/Mashkiiziibii Natural Resources Department requesting approval to install various types of

erosion prevention measures at the area generally known as the “Meander.” To date, the Band has not permitted any of these projects to proceed.

May 9, 2023 Sandbag Project

3. On May 9, 2023, Enbridge submitted a proposal to the Mashkiiziibii Natural Resources Department (“MNRD”) to place sandbags along the riverbank at the Meander. This project would provide support to the riverbank and protect against future erosion in the area.

4. As proposed, the sandbags would be located solely on Enbridge’s property, which it owns at the Meander. But Enbridge is also willing to perform the same work on the adjacent property in which the Band has an ownership interest. Each sandbag weighs approximately 2,700 pounds and would be brought in by helicopter, in order to minimize environmental impacts. The sandbags would be guided into place by workers at the Meander and no excavation would be necessary. The sandbags would be temporary in nature and could be removed by helicopter. A true and correct copy of the application and accompanying cover letter, which describe the project in greater detail, are attached hereto as **Exhibit A**.

5. Contrary to the Band’s claims in its motion that no projects can be completed except during low-flow conditions, Enbridge’s project applications for revetment have never stated that work could *only* occur during low-flow conditions. Rather, Enbridge, as part of its applications, planned for work to occur during the least environmentally impactful periods. Work on these projects could occur during other referenced times, just with different (but still acceptable and minimal) environmental impacts.

6. Enbridge’s proposed sandbag project can be installed on the riverbank during higher flow conditions. Moreover, the sandbags can be installed in the conditions existing now and that are likely to continue to exist for the majority of May and June. Following receipt of the

necessary approvals, the project could be completed in a maximum of two weeks, with some prep work to precede it. As explained below, some of that prep work is taking place now.

7. If the Band were to approve this project, based on my knowledge of the project and my experience with other project applications, such as those for “integrity digs” (where Enbridge eventually received permission from the Band to dig down to the line to examine it), as well as my conversations with the other agencies, the approvals from other agencies could be received in a matter of days and almost certainly within a few weeks.

8. Because the Band claimed there is an emergency at the Meander in its May 9 motion, Enbridge asked the Band for an expedited review of Enbridge’s proposed sandbag project.

9. In its cover letter for the project, Enbridge requested an opportunity to meet with the MNRD as soon as possible to discuss the project and any reasonable modifications that the Band wanted to see. I reiterated that request in my email transmitting the cover letter and project application to the MNRD on May 9.

10. On May 11, I received a response that MNRD would review the application materials. MNRD said that it would “follow up with a potential meeting time.”

11. Also on May 11, I received another email from the MNRD requesting a meeting on May 15 to “identify additional information and clarification that is necessary from Enbridge for [MNRD] to continue reviewing and evaluating the proposed project and potential impacts and to make informed permitting/approval decisions.”

12. The Band has previously taken the position that another Enbridge application for erosion prevention at the Meander was “incomplete.” For example, the MNRD contended that Enbridge’s May 27, 2022 riprap project was “incomplete” or “inaccurate.” Even after we submitted copious information to the Band that responded to all of the Band’s contentions that the

application was incomplete, and even though the application was hundreds of pages, the Band still contended that the application was “incomplete” or “inaccurate.”

13. In my over 15 years of putting in environmental permit applications, these are the only instances I recall in my career that a permitting authority has told me my applications were “incomplete” or “inaccurate,” except for one instance where the WDNR explained to me that it could not review one of Enbridge’s erosion prevention projects because the Band would not provide any permission as a landowner for the land on which part of the erosion prevention project would be located.

14. On Friday, May 12, I received an email from the MNRD with a series of questions requesting additional information about the proposed sandbag project. On Saturday, May 13, I responded with all information available to Enbridge and requested the timeline of approval for this project. On Sunday, May 14, the MNRD responded with more requests for information and told me they could not give an estimated timeline of approval until Enbridge answered these additional questions. On May 15, Enbridge responded with all the requested information, before meeting with the MNRD. A true and correct copy of this correspondence is attached hereto as **Exhibit B**.

15. On May 15, I attended a meeting with MNRD. For the meeting, Enbridge assembled key personnel from all disciplines involved in the project – construction, engineering, tribal engagement, project management, pipeline integrity, and environmental permitting – to answer any questions regarding the project. MNRD gave no indication of whether or not it would approve the project. MNRD gave no indication of how long its review would take. Instead, MNRD personnel used the meeting to ask questions that do not appear calculated to provide material information related to a water quality assessment or whether the project should be

approved, such as “How will the sandbags be filled with sand?” and “How much do the sandbags weigh when wet?” The Band also indicated it wishes to conduct a cultural survey, despite the project not requiring any ground disturbance, and when Enbridge inquired as to why the survey was deemed necessary and what the timing of the survey might be, the MNRD declared it was time for the meeting to conclude. Enbridge has, nevertheless, supplied information responsive to all of the Band’s requests.

16. In the meantime, Enbridge has and continues to undertake preparations so that it is prepared to install the sandbags on its property as soon as possible after the Band approves this work, most likely within a few weeks. Specifically:

- a. Enbridge has ordered and received the bags in which the sand will be placed.
- b. Enbridge is planning a staging area to fill the bags, where they will then be transported by helicopter to the Meander.
- c. Enbridge has obtained landowner permissions for access to and use of this staging area.
- d. Enbridge is in the process of procuring locally sourced sand from Jolma Sand and Gravel LLC, and have confirmed that the amount of material needed for the project is available.
- e. Enbridge has received the internal approval to use a helicopter to install the sandbags and has placed a three-week reservation for a helicopter to use here. The contractor has confirmed the helicopter can be on site upon one week’s notice that Enbridge is ready to proceed.

17. Enbridge can undertake this project as early as this spring and virtually any time thereafter.

May 15, 2023 Tree Revetment Project

18. In addition to the sandbag project, Enbridge has developed a longer-term project that uses natural materials to prevent future erosion at the Meander.

19. The tree revetment project consists of natural trees and other materials such as natural material rope that will be placed on the riverbank located on Enbridge's property, which it owns at the Meander. The revetment is designed to prevent erosion. As with the sandbags, Enbridge is also willing to install the project on the adjacent property in which the Band has an ownership interest if permitted to do so. The tree revetment is designed to be longer-term than sandbags, but still temporary in nature. It could be removed when no longer needed.

20. On May 15, 2023, I submitted to MNRD a project application for a revised tree revetment project. A true and correct copy of that application is attached hereto as **Exhibit C**.

21. The permitting process for the sandbag project largely applies to the revised tree revetment project application as well. If approved by the Band, the other approvals would likely be obtained quickly.

22. Once approved, the tree revetment project would take approximately five to six weeks to construct. Construction would start shortly after approval.

23. The intent with these two projects is that the sandbags would be installed immediately and then stay in place until Enbridge is able to install a tree revetment or longer-term remedy acceptable to the Band. Doing so would ensure continuous protection from erosion and provide continuous bank stabilization.

24. In addition to both of these options, Enbridge's May and September 2022 riprap proposals remain pending with the Band. After trial, the Band took the position that the May 2022 proposed project was "incomplete" but never rendered any final decision on it. The Band has

never rendered a decision on the September 2022 riprap project. The Band, despite multiple requests by Enbridge, never agreed to meet with Enbridge or discuss either of these projects.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 16, 2023

/s/ Julie Kloss Molina
Julie Kloss Molina